

# Government of the District of Columbia

## ZONING COMMISSION



ZONING COMMISSION ORDER NO. 346  
CASE NO. 80-17C  
July 9, 1981

Pursuant to notice, public hearings of the D.C. Zoning Commission were held on March 19, April 6, April 13, and June 8, 1981. At these hearing sessions the District of Columbia Zoning Commission considered an application from the 4-L Associates Joint Venture for consolidated review and approval of a Planned Unit Development and a change of zone from R-3 to R-5-A.

### FINDINGS OF FACT

1. The subject application is a request for consolidated review and approval of a Planned Unit Development under Section 7501 of the Zoning Regulations and a change of zone from R-3 to R-5-A for Lot 803 in Square 3501. The site is located near the intersection of Franklin Street and Lincoln Road, N.E. near Michigan Avenue and comprises approximately 175,786 square feet or 4.035 acres.
2. The R-3 District permits matter-of-right development of single-family residential uses including detached, semi-detached, and row dwellings with a minimum lot area of 2000 square feet, a minimum lot width of twenty feet, a maximum lot occupancy of sixty percent, and a maximum height of three stories/forty feet.
3. The R-5-A District permits matter-of-right low density development of general residential uses, including single-family dwellings, flats, and apartment buildings, to a maximum FAR of 0.9, a maximum lot occupancy of forty percent, and a maximum height of three stories/forty feet.
4. Under the PUD process of the Zoning Regulations, the Zoning Commission has the authority to impose development conditions, guidelines, and standards which will control the actual development of the site. In the R-5-A District, the maximum height permitted would be sixty feet and the maximum floor area ratio would be 1.0.

5. The subject site is abutted by R-5-A zoning to the north at the Trinity College site, and R-3 zoning on the Glenwood Cemetery tract to the east and south. There is also R-3 zoning for the residential area located to the west of the site.
6. Uses in the subject area included Trinity College and the Park Place townhouse development to the north, the Glenwood Cemetery to the south and east and rowhouse development to the west.
7. The subject site encompasses approximately four acres of land previously within the fifty-five acre Glenwood Cemetery. The site is presently unimproved and has never been utilized for cemetery purposes.
8. The property measures approximately 600 feet along Franklin Street on the north side, 390 feet along the east side bordering Lincoln Road, approximately 820 feet along the south side bordering the remaining portion of the Cemetery, and ninety feet along the public alley bordering Square 3501 and Girard Street, N.E. on the west side.
9. The applicant originally proposed to construct a residential development of six townhouse-type structures, considered apartments under the Zoning Regulations, containing 136 Section 8 Federally assisted rental units. The housing mix was proposed to consist of sixty-eight three-bedroom units and sixty-eight two-bedroom units.
10. The proposed structures had a height ranging from forty-four to forty-eight feet measured to the ridge of the roof. This height would result in approximately the same height as a building constructed as a matter-of-right in an R-3 District measured to the underside of the roof.
11. The dwelling units were to be of predominantly masonry construction, and were to be sited to take advantage of the existing sloping topography of the site.
12. Parking was proposed to be provided at the rate of 120 spaces for 136 dwelling units or a parking ratio of .88 spaces per unit. Several of the spaces were for compact cars and had a size less than nine feet by nineteen feet, the standard size set by the Zoning Regulations.

13. The development proposed a gross floor area of 175,786 square feet, resulting in an F.A.R. of approximately .99. The development was proposed to occupy 45,638 square feet, or a lot occupancy of about twenty-six percent. There was approximately 97,953 square feet of "green area" that would benefit the future residents of the project.
14. Simon Hershon, representative of the applicant, testified that the proposed PUD would result in efficient and economical utilization of the subject land, achieve an attractive urban design, provide desired open space, improve circulation, adequately insure the protection of the public health, welfare and convenience, and provide additional family rental opportunities in a desirable location with energy efficient construction.
15. Robert Morris, traffic and transportation consultant, testified that there would be no adverse impact on traffic conditions in the area due to the proposed development and that the proposed parking ratio of approximately .88 spaces per dwelling unit would be adequate for the expected car ownership of future residents. The capacity of Lincoln Road and Franklin Street to adequately accommodate traffic would not be adversely affected by this application. Furthermore, Mr. Morris testified that the restriction of one curb cut to the site would be superior to the provisions of multiple curb cuts on Franklin Street, which would otherwise be permitted as a matter-of-right. The Commission concurs in the findings of Mr. Morris.
16. Joseph Schuble testified on behalf of the applicant that there is a lesser likelihood of eviction in a Section 8 project as compared to other housing, and that there is a greater acceptance on the part of Section 8 residents to follow rules and regulations for the project. A greater degree of screening of applicants occurs in a Section 8 project than in a conventional rental project. A managing agent has many applications from which to review and the agent may be extremely selective in the tenant selection process. The witness also testified that the Section 8 regulations strictly limit the number of occupants in a unit and that occupancy in violation of the standards is cause for eviction. Mr. Schuble also submitted materials as part of a supplemental packet requested by the Commission. These materials specifically discuss the advantages of a Section 8 project and state that experience with Section 8 projects located in stable neighborhoods indicates that such projects do not adversely affect such neighborhoods.

17. The subject site is located in a stable neighborhood containing a mixture of homeowner and rental occupancies based on 1970 Census Tract 92 data. Arthur Fawcett, land-use consultant, testified that the proposed rezoning and planned unit development is consistent with the development goals and policies of the District of Columbia, is responsive to the critical need for affordable rental housing in the city, will enhance and promote the future development of the surrounding area and will provide future residents with amenities in a living environment superior to that which would-be achieved under conventional zoning provisions. The land-use consultant also stated that adequate public services were available. He further testified that the density of development of the site was proposed to be 33.7 dwelling units per acre. The number of dwelling units existing per acre to the west of the site is approximately 26, with approximately 48 units per acre situated in the area to the east of the site. The Commission concurs in the findings of Mr. Fawcett.
  
18. Mr. Robert Moore, Director of the Department of Housing and Community Development, testified in support of the application because it furthers significant city objectives in providing low-cost family rental housing. Mr. Moore also stated that the proposed development was a priority site for the location of Section 8 housing units within the District of Columbia. At the further public hearing, Mr. Moore stated that much citizen participation with the community had taken place with his agency in working towards a final resolution to many of the subject issues. He added that DHCD supports the project due to the severe housing shortage in the District. Recently, 310 units of Section 8 housing were offered to the District by the U.S. Department of Housing and Urban Development, for which there were applications for 4,000 units. Mr. Moore stated further that rental housing will not destabilize the subject area. Eighty-eight percent of the existing units in the area are owner occupied, and the proposed development is relatively small. Mr. Moore cited the Benning Court and the Pentacle housing developments within the District as being comparably sized Section 8 projects which have had no adverse affects on the neighborhoods in which they are located.

19. Jeffrey Cohen, representative of the applicant, testified as to the acquisition of the site and ownership of the subject property in 4-L Associates Joint Venture. The 4-L Associates Joint Venture is the record owner of the subject property.
20. The Office of Planning and Development by report dated March 9, 1981, and by testimony at the public hearing recommended that the Zoning Commission approve the application stating:

"The Office of Planning and Development finds that the proposed Planned Unit Development will help advance high priority city goals relating to housing supply and land use planning; reflects sound project planning, efficient land utilization, attractive urban design, provision of public amenities which might not result from the general provisions of the Zoning Regulations; and is consistent with the goals of the Planned Unit Development process. OPD accordingly recommends that the application be approved, subject to the site plan amendments necessitated by the recommended change in parking requirements and provision of the on-site stormwater retention system."

The representative of the Office of Planning and Development stated at the June 8, 1981 public hearing that the revised proposal also represents a good quality development which meets high priority city needs and will be an asset to the neighborhood.

21. The D.C. Department of Transportation, by testimony at the public hearing, raised questions about the amount of parking proposed for the development and recommended that parking be provided at the rate of one space per dwelling unit. However, the DOT witness stated in conclusion that the proposed development would have no adverse traffic impact.
22. The Fire Department, the Superintendent of Schools, and the Department of Environmental Services, through the report of the Office of Planning and Development dated March 9, 1981 indicated no objections to the proposed development.

23. The Metropolitan Police Department, by memorandum dated March 3, 1981, stated that every effort would be made to insure and maintain close communications with all interested groups associated with the proposed planned unit development whether formally organized or not.
24. Daniel Robinson, Chairman of Advisory Neighborhood Commission 5C, by letter dated March 18, 1981, reported that his ANC supported the application as originally proposed.
25. By letter dated April 17, 1981, ANC - 5C withdrew the letter from its chairman, which had been presented without the authority and sanction of the ANC. In the letter of April 17, 1981 the ANC stated its position in opposition to the application for the following reasons:
  - A. The predominant orientation of the site is toward the area now zoned R-3. The site can and should be developed as a matter-of-right or under PUD with no zone change.
  - B. The proposed development of 136 units is too dense to be compatible with the existing neighborhood of single-family row homes.
  - C. The amenities offered do not provide a buffer between the property and the adjacent cemetery. A buffer of a minimum of thirty feet with shrubbery and bushes should be provided to prevent noise and activity of the development from affecting the cemetery and to help preserve the solemn tranquility that should be accorded to the families who come to bury and mourn their deceased.
  - D. The area is plagued with inadequate sewage resources to handle the existing flooding problems. The problems will be greatly compounded by the proposed development because of the inadequacy of the present storm drainage system and flooding problems existing at Lincoln Road and Franklin Street, N.E. The plan proposed by the developer to handle water run-off does not appear to be adequate.
  - E. The use of Franklin Street for vehicular access to the site would increase traffic on Franklin Street and other residential streets. Vehicles making left turns entering and leaving the proposed site will create additional traffic problems along Franklin Street.

- F. The existing neighborhood is already experiencing a saturation of parked cars, caused by the ownership of more-than-one car per dwelling unit. These problems are exacerbated by restricted parking on both North Capitol Street and Michigan Avenue. Although unrestricted parking is permitted on the north side of Franklin Street, residents do not park on Franklin Street because of the volume of high speed traffic and the many accidents that have occurred along the affected portion of Franklin Street.
  - G. There are inadequate recreational facilities to serve the existing community. The additional population, as proposed, would further strain the few existing facilities. The developer has not proposed any recreational facilities for sub-teens, teens and adult residents. There is no plan for a fence for the proposed elevated tot lot on the west end of the development site.
  - H. The impact of the proposed development on the inadequacies of public recreation, the water and sewer systems, and electricity would exacerbate existing conditions. Due to the present inadequate electric service, the area presently experiences brown-outs and black-outs causing malfunctions of the major appliances and necessitating unwarranted repairs and unusually early replacements.
  - I. The development as presently proposed would not permit access to the rear of the dwellings by fire apparatus.
26. Two residents within 200 feet of the subject property, an owner of plots within the Glenwood Cemetery, and a representative of the Glenwood Cemetery's Board of Trustees appeared as parties in opposition to the case. There were also several area residents who testified at the public hearing in opposition to the case. The areas of greatest concern to the parties and persons in opposition were as follows:
- A. The proposed development would radically alter the neighborhood, by the change in population with the addition of renters who are an unstable population.

- B. The existing R-3 District would allow for a more stable development.
  - C. The District needs more low-income housing, but it shouldn't impact existing neighborhoods.
  - D. When such projects are built, land values increase and building values decrease.
  - E. Cemetery lot owners were told by the Cemetery at the time this site was sold, that townhouses would be built. There will be negative impact on the nearby adjacent grave sites due to litter, noise, loss of privacy, and vandalism, assaults and desecration of the cemetery due to the increased population and increased number of renters.
  - F. The all-electric units proposed will generate high electricity bills for moderate-income tenants.
  - G. The development would be an isolated compound.
  - H. Increased traffic on Franklin Street would occur.
  - I. The parking ratio of .88 cars per dwelling unit, as originally proposed, was not sufficient.
  - J. The project has only one entrance which is not enough.
  - K. The proposal lacked adequate recreational facilities for all age groups.
27. When the matter was before the Zoning Commission for a decision at its regular monthly meeting held on May 14, 1981, the Commission was informed by John H. McKoy, Executive Director, OPD that the Section 8 housing monies available to the District from the Federal Government had been drastically reduced to a point where a revised proposal for the subject project would be necessary in order to go forward with the case. The Chairman therefore ruled to re-open the record and held a further hearing limited to the following issues:
- a. Number of dwelling units
  - b. Size of dwelling units
  - c. Site plan
  - d. Percentage of Section 8 and market-rate housing
  - e. Recreation space, and related testimony.

28. The applicant's representatives presented to the Commission at the further hearing a revised plan which proposed 100 units, as opposed to the original 136. The resulting density on the site was now approximately twenty-five units per acre rather than thirty-five and this density reduction has generally beneficial effects on the site plan. The number of units was only thirteen units greater than what could be constructed as a matter of right under R-3 zoning, a small density increase compared to the benefits secured under the PUD approach.
29. The applicant now proposed to have a significant reduction in three-bedroom units, the largest units proposed, from sixty-eight previously to forty-eight in the present plan. Two-bedroom units would be reduced from sixty-eight to fifty-two in the current plan. This reduction in larger units not only reduces population and population density on the site, but also reduces demands on some public services which relate to population; e.g., public parks/recreation, school capacity, and sewer service. As to the latter, the stormwater retention system proposed by the applicant and approved preliminary by the Department of Environmental Services will help alleviate water runoff and sewerage system capacity problems in this area. The low percentage of impervious surface on the site also alleviates storm water runoff problems. The DES has indicated that under matter-of-right R-3 development, the Department would have no regulatory means of requiring storm water retention on site, whereas the Planned Unit Development process has made this possible.
30. The reduced number of dwelling units and buildings on the site has the effect of improving the site plan in the following respects:
  - A. The rows of buildings are shorter in several clusters, allowing easier pedestrian circulation around the site and a greater sense of openness on the site.
  - B. Lot occupancy is now only eighteen percent, compared to the twenty-six percent originally proposed.
  - C. Despite the increase in impervious surface for surface parking from 39,000 square feet to 43,000 square feet, total green space is now fifty-seven percent, an increase from the previous fifty-two percent.

- D. The buildings are further separated from the edge of the site, thereby increasing privacy for the residences adjacent to the site on the west, and increasing privacy for the cemetery to the south and east.
  - E. The two recreation areas have been doubled in total area, from 2,500 square feet to 5,000 square feet. The recreation area at the west end of the site is much larger than previously proposed, and effectively provides a side yard of 165 feet from the westernmost building to the west property line.
  - F. The building edges closest to the cemetery are now removed from cemetery property by distances ranging from twenty-two to fifty feet.
  - G. The proposed landscaping treatment provides for preservation of several mature trees, prominent at the western edge of the site, where they help to buffer the adjacent row dwellings from the new housing.
  - H. Along the chain link fence separating the site from the cemetery to the south, the evergreen planting proposed is tightly spaced and will provide attractive screening of the cemetery from the proposed development.
  - I. The attractive existing stone wall and entranceway along Franklin Street will be retained and incorporated as a major design feature of the proposed development.
31. Parking is now provided at a ratio of one space per unit, as recommended by the Department of Transportation.
32. The applicant applied for Section 8 subsidy funds for all 100 units. The applicant indicated that if only a portion of the units received subsidies, the remaining units would be offered as market-rate sales or market-rate rentals. The Commission takes administrative notice that after the closing of the record, but prior to the adoption of this Order, the D.C. Housing Finance Agency approved subsidy funds for all 100 units of the project.

33. The parties and persons in opposition to the case maintained their position in opposition to the application at the further hearing, raising essentially the same objections to the revised proposal as to the original proposal.
34. The Commission has carefully considered the issues and concerns raised by the parties and persons in opposition to the application, as well as those raised by the ANC. The Commission is required by statute to give "great weight" to the issues and concerns of the ANC. The Commission notes that Advisory Neighborhood Commission - 5C did not submit written comments regarding the issues discussed at the June 8, 1981 hearing. In response to the issues raised by the ANC in its original written report and those issues raised by the other opposition, the Commission finds as follows:
  - A. As set forth in Findings 5 and 6, the area has a variety of zone districts and uses. The Commission finds that the subject site is more appropriately developed under the PUD process than under the R-3 zoning as a matter-of-right. Under Section 7501, the Commission can insure compatibility with the surrounding area by imposing conditions on the approval of the application. Furthermore, as set forth in Findings 29 and 30, the development offers many advantages and features that would not be provided as a matter-of-right under R-3 type development.
  - B. The proposed development has been reduced from 136 to 100 units. This yields a density of less than twenty-five units per acre. This density is no higher than the existing density surrounding areas.
  - C. As set forth in Finding 30, the revised site plan provides for a setback along the Cemetery property line that varies in width from twenty-two to fifty feet. The Commission will further require extensive landscaping along that property line.
  - D. The storm water retention system proposed by the applicant has been approved in concept by the D.C. Department of Environmental Services.
  - E. As set forth in Findings 15 and 21, the development would have no adverse traffic impact.

- F. The revised plan provides parking at the rate of one space per dwelling unit, a level acceptable to the D.C. Department of Transportation.
  - G. The revised plans propose two on-site equipped recreation areas. There are other recreational facilities available in the area to serve all persons residing in the community. The Commission will require a fence adjacent to the recreation area on the west end of the site.
  - H. There is no objection to the proposed development on the part of the Fire Department.
  - I. The issues as to electrical consumption and power brown-outs is not a valid consideration for the Zoning Commission. Such matters should be brought to the attention of the Potomac Electric Power Company and the Public Service Commission.
35. The proposed action was referred to the National Capital Planning Commission under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. The National Capital Planning Commission reported that the PUD, with the guidelines, standards, and conditions as proposed by the Zoning Commission, would not be inconsistent with the Comprehensive Plan for the National Capital would not adversely affect the Federal interests in the National Capital.

#### CONCLUSIONS OF LAW

1. The proposed Planned Unit Development meets the minimum area requirements of Sub-section 7501.2 of the Zoning Regulations.
2. The Planned Unit Development process is an appropriate means of controlling development of the subject site.
3. Approval of this consolidated PUD application, as revised, is appropriate, because the application is generally consistent with the present character of the area and because it would encourage stability of the area.

4. The Commission takes notes of the position of Advisory Neighborhood Commission - 5C, and in its decision has accorded to the ANC the "great weight" to which it is entitled.
5. The approval of the application as revised would promote orderly development in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
6. The proposed application as revised can be approved with conditions which would insure that development would not have an adverse effect on the surrounding area.

#### DECISION

The D.C. Department of Housing and Community Development testified that the proposed development was a priority site for the location of Section 8 housing units. The D.C. Office of Planning and Development supported the proposed development and the priority of Section 8 housing on the site. The District of Columbia needs affordable rental housing intergrated into existing neighborhood. The Commission believed that the subject development is meritorious because it contains a substantial number of three-bedroom units for larger families and because it provides new housing in a design which is of an exemplary character. The Commission therefore recommended to the District of Columbia Housing Finance Agency that it is in the best interest of the District of Columbia that the proposed development known as Franklin Commons be given priority in the allocation of Section 8 housing subsidy funds. The Commission strongly urged the Housing Finance Agency to allocate subsidy funds under the Section 8 program to all of the units in the proposed development. As set forth in Finding No. 18, the Commission notes that the D.C. Housing Finance Agency approved Section 8 subsidy funds for all 100 units of the proposed project.

In consideration of the Findings of Fact and the Conclusions of Law herein, the Commission hereby Orders approval of the consolidated Planned Unit Development for Lot 803 in Square 3501, and the approval of a change in zone from R-3 to R-5-A for Lot 803 in Square 3501 both subject to the following guidelines, conditions, and standards:

1. The Planned Unit Development shall be developed in accordance with the plans submitted to the Zoning Commission, prepared by Collins and Kronstadt, dated May 21, 1981, marked as Exhibit No. 117 of the record, except as such plans may be modified to conform to the guidelines, conditions and standards of this Order.
2. The project shall consist of a maximum of 100 dwelling units, of which approximately forty-eight percent shall consist of three-bedroom units and approximately fifty-two percent shall consist of two-bedroom units.
3. The overall floor area ratio of the project shall not exceed 0.7.
4. The percentage of lot occupancy shall not exceed eighteen percent.
5. The buildings shall be three to four stories in height, not to exceed forty-eight feet measured to the highest point of the roof.
6. Landscaping shall be provided as specified on the plan marked as Exhibit No. 136A of the record, including existing trees to be preserved. The fence shown on the western portion of the site adjacent to the play area shall be a wood stockade fence, six feet in height. The existing stone wall and entranceway fronting on Franklin Street shall be preserved and improved as shown on Exhibit No. 136A.
7. Two active recreation areas for children shall be provided and equipped with recreational equipment as specified on Exhibit No. 136A.
8. The applicant shall construct an on-site storm water retention system having a minimum capacity of 13,000 gallons, as shown on the plan marked as Exhibit No. 136B of the record. The applicant shall further construct sediment and erosion control measures as shown on Exhibit No. 136B of the record, or to satisfy the requirements of the Department of Environmental Services if the Department requires more stringent sediment and erosion control measures.

9. A total of 100 parking spaces shall be provided on the site, with a single entrance to the site from Franklin Street, as shown on sheet SG-1 of Exhibit No. 117. All parking spaces shall be at least nine feet wide and nineteen feet long.
10. The applicant shall seek to obtain housing subsidy funds under the Federal Section 8 subsidy program for all of the dwelling units on the site. This PUD approval shall be considered null and void and no building permit shall be issued hereunder unless the applicant certifies that Section 8 subsidy funds are available for at least twenty-five percent of the units. In the event that all of the units are not to be subsidized, the applicant shall further certify that the subsidized units are scattered throughout all the buildings on the site.
11. No building permit shall be issued until the applicant has recorded a covenant in the land records of the District of Columbia, between the owner and the District of Columbia, satisfactory to the Office of the Corporation Counsel and the Zoning Regulations Division, which covenant shall bind the owner and all successors in title to construct on and use the property only in accordance with the adopted Orders, or amendments thereof, of the Zoning Commission.
12. The Planned Unit Development approved by the Zoning Commission shall be valid for a period of two years from the effective date of this Order. Within such time, application must be filed for a building permit, as specified in Paragraph 7501.81 of the Zoning Regulations. Construction shall start within three years of the effective date of this Order.

Vote of the Commission taken at the public meeting of June 11, 1981: 4-0 (Commissioners Walter B. Lewis, Ruby B. McZier, John G. Parsons, and George M. White to APPROVE with CONDITIONS: Commissioner Lindsley Williams, not voting, not having heard the case).

*for* Ruby B. McZier, Vice Chairperson,  
WALTER B. LEWIS  
Chairman  
Zoning Commission

Steven E. Sher *CBT*  
STEVEN E. SHER  
Executive Director  
Zoning Secretariat

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This Order was adopted by the Zoning Commission at its public meeting held on July 9, 1981, by a Vote of 3-0 (Walter B. Lewis, Ruby B. McZier and John G. Parsons to ADOPT; Lindsley Williams not voting, not having participated in the proceedings; George M. White, not present, not voting).

In accordance with Section 4.5 of the Rules of Practice and Procedure before the Zoning Commission of the District of Columbia, this Order is final and effective on **14 AUG 1981**. The amendment to the Zoning Map shall not be effective until the required covenant is filed in the land records of the District of Columbia.